

House Engrossed

dry washes; permit program exemption

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

# HOUSE BILL 2056

AN ACT

AMENDING SECTION 49-201, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 3.2, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-256.03; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-201, Arizona Revised Statutes, is amended to  
3 read:

4 49-201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administrator" means the administrator of the United States  
7 environmental protection agency.

8 2. "Aquifer" means a geologic unit that contains sufficient  
9 saturated permeable material to yield usable quantities of water to a well  
10 or spring.

11 3. "Best management practices" means those methods, measures or  
12 practices to prevent or reduce discharges and includes structural and  
13 nonstructural controls and operation and maintenance procedures. Best  
14 management practices may be applied before, during and after discharges to  
15 reduce or eliminate the introduction of pollutants into receiving waters.  
16 Economic, institutional and technical factors shall be considered in  
17 developing best management practices.

18 4. "CERCLA" means the comprehensive environmental response,  
19 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.  
20 2767; 42 United States Code sections 9601 through 9657), commonly known as  
21 "superfund".

22 5. "Clean closure" means implementation of all actions specified in  
23 an aquifer protection permit, if any, as closure requirements, as well as  
24 elimination, to the greatest degree practicable, of any reasonable  
25 probability of further discharge from the facility and of either exceeding  
26 aquifer water quality standards at the applicable point of compliance or,  
27 if an aquifer water quality standard is exceeded at the time the permit is  
28 issued, causing further degradation of the aquifer at the applicable point  
29 of compliance as provided in section 49-243, subsection B, paragraph 3.  
30 Clean closure also means postclosure monitoring and maintenance are  
31 unnecessary to meet the requirements in an aquifer protection permit.

32 6. "Clean water act" means the federal water pollution control act  
33 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code  
34 sections 1251 through 1376), as amended.

35 7. "Closed facility" means:

36 (a) A facility that ceased operation before January 1, 1986, that  
37 is not, on August 13, 1986, engaged in the activity for which the facility  
38 was designed and that was previously operated and for which there is no  
39 intent to resume operation.

40 (b) A facility that has been approved as a clean closure by the  
41 director.

42 (c) A facility at which any postclosure monitoring and maintenance  
43 plan, notifications and approvals required in a permit have been  
44 completed.

1           8. "Concentrated animal feeding operation" means an animal feeding  
2 operation that meets the criteria prescribed in 40 Code of Federal  
3 Regulations part 122, appendix B for determining a concentrated animal  
4 feeding operation for purposes of 40 Code of Federal Regulations sections  
5 122.23 and 122.24, appendix C.

6           9. "Department" means the department of environmental quality.

7           10. "Direct reuse" means the beneficial use of reclaimed water for  
8 specific purposes authorized pursuant to section 49-203, subsection A,  
9 paragraph 7.

10          11. "Director" means the director of environmental quality or the  
11 director's designee.

12          12. "Discharge" means the direct or indirect addition of any  
13 pollutant to the waters of the state from a facility. For purposes of the  
14 aquifer protection permit program prescribed by article 3 of this chapter,  
15 discharge means the addition of a pollutant from a facility either  
16 directly to an aquifer or to the land surface or the vadose zone in such a  
17 manner that there is a reasonable probability that the pollutant will  
18 reach an aquifer.

19          13. "Discharge impact area" means the potential areal extent of  
20 pollutant migration, as projected on the land surface, as the result of a  
21 discharge from a facility.

22          14. "Discharge limitation" means any restriction, prohibition,  
23 limitation or criteria established by the director, through a rule, permit  
24 or order, on quantities, rates, concentrations, combinations, toxicity and  
25 characteristics of pollutants.

26          15. "Effluent-dependent water" means a surface water or portion of  
27 a surface water that consists of a point source discharge without which  
28 the surface water would be ephemeral. An effluent-dependent water may be  
29 perennial or intermittent depending on the volume and frequency of the  
30 point source discharge of treated wastewater.

31          16. "Environment" means WOTUS, any other surface waters,  
32 groundwater, drinking water supply, land surface or subsurface strata or  
33 ambient air, within or bordering on this state.

34          17. "Ephemeral water" means a surface water or portion of surface  
35 water that flows or pools only in direct response to precipitation.

36          18. "Existing facility" means a facility on which construction  
37 began before August 13, 1986 and that is neither a new facility nor a  
38 closed facility. For the purposes of this definition, construction on a  
39 facility has begun if the facility owner or operator has either:

40           (a) Begun, or caused to begin, as part of a continuous on-site  
41 construction program any placement, assembly or installation of a  
42 building, structure or equipment.

43           (b) Entered a binding contractual obligation to purchase a  
44 building, structure or equipment that is intended to be used in its  
45 operation within a reasonable time. Options to purchase or contracts that

1 can be terminated or modified without substantial loss, and contracts for  
2 feasibility engineering and design studies, do not constitute a  
3 contractual obligation for purposes of this definition.

4 19. "Facility" means any land, building, installation, structure,  
5 equipment, device, conveyance, area, source, activity or practice from  
6 which there is, or with reasonable probability may be, a discharge.

7 20. "Gray water" means wastewater that has been collected  
8 separately from a sewage flow and that originates from a clothes washer or  
9 a bathroom tub, shower or sink but that does not include wastewater from a  
10 kitchen sink, dishwasher or toilet.

11 21. "Hazardous substance" means:

12 (a) Any substance designated pursuant to sections 311(b)(2)(A) and  
13 307(a) of the clean water act.

14 (b) Any element, compound, mixture, solution or substance  
15 designated pursuant to section 102 of CERCLA.

16 (c) Any hazardous waste having the characteristics identified under  
17 or listed pursuant to section 49-922.

18 (d) Any hazardous air pollutant listed under section 112 of the  
19 federal clean air act (42 United States Code section 7412).

20 (e) Any imminently hazardous chemical substance or mixture with  
21 respect to which the administrator has taken action pursuant to section 7  
22 of the federal toxic substances control act (15 United States Code section  
23 2606).

24 (f) Any substance that the director, by rule, either designates as  
25 a hazardous substance following the designation of the substance by the  
26 administrator under the authority described in subdivisions (a) through  
27 (e) of this paragraph or designates as a hazardous substance on the basis  
28 of a determination that such substance represents an imminent and  
29 substantial endangerment to public health.

30 22. "Inert material":

31 (a) Means broken concrete, asphaltic pavement, manufactured  
32 asbestos-containing products, brick, rock, gravel, sand and soil. ~~inert~~  
33 ~~material also~~

34 (b) Includes material that when subjected to a water leach test  
35 that is designed to approximate natural infiltrating waters will not leach  
36 substances in concentrations that exceed numeric aquifer water quality  
37 standards established pursuant to section 49-223, including overburden and  
38 wall rock that is not acid generating, taking into consideration acid  
39 neutralization potential, and that has not and will not be subject to mine  
40 leaching operations.

41 23. "Intermittent water" means a surface water or portion of  
42 surface water that flows continuously during certain times of the year and  
43 more than in direct response to precipitation, such as when it receives  
44 water from a spring, AN elevated groundwater table or another surface  
45 source, such as melting snowpack.

1           24. "Major modification" means a physical change in an existing  
2 facility or a change in its method of operation that results in a  
3 significant increase or adverse alteration in the characteristics or  
4 volume of the pollutants discharged, or the addition of a process or major  
5 piece of production equipment, building or structure that is physically  
6 separated from the existing operation and that causes a discharge,  
7 provided that:

8           (a) A modification to a groundwater protection permit facility as  
9 defined in section 49-241.01, subsection C that would qualify for an  
10 area-wide permit pursuant to section 49-243 consisting of an activity or  
11 structure listed in section 49-241, subsection B shall not constitute a  
12 major modification solely because of that listing.

13           (b) For a groundwater protection permit facility as defined in  
14 section 49-241.01, subsection C, a physical expansion that is accomplished  
15 by lateral accretion or upward expansion within the pollutant management  
16 area of the existing facility or group of facilities shall not constitute  
17 a major modification if the accretion or expansion is accomplished through  
18 sound engineering practice in a manner compatible with existing facility  
19 design, taking into account safety, stability and risk of environmental  
20 release. For a facility described in section 49-241.01, subsection C,  
21 paragraph 1, expansion of a facility shall conform with the terms and  
22 conditions of the applicable permit. For a facility described in section  
23 49-241.01, subsection C, paragraph 2, if the area of the contemplated  
24 expansion is not identified in the notice of disposal, the owner or  
25 operator of the facility shall submit to the director the information  
26 required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

27           25. "New facility" means a previously closed facility that resumes  
28 operation or a facility on which construction was begun after August 13,  
29 1986 on a site at which no other facility is located or to totally replace  
30 the process or production equipment that causes the discharge from an  
31 existing facility. A major modification to an existing facility is deemed  
32 a new facility to the extent that the criteria in section 49-243,  
33 subsection B, paragraph 1 can be practicably applied to such modification.  
34 For the purposes of this definition, construction on a facility has begun  
35 if the facility owner or operator has either:

36           (a) Begun, or caused to begin as part of a continuous on-site  
37 construction program, any placement, assembly or installation of a  
38 building, structure or equipment.

39           (b) Entered a binding contractual obligation to purchase a  
40 building, structure or equipment that is intended to be used in its  
41 operation within a reasonable time. Options to purchase or contracts that  
42 can be terminated or modified without substantial loss, and contracts for  
43 feasibility engineering and design studies, do not constitute a  
44 contractual obligation for purposes of this definition.

1           26. "Nonpoint source" means any conveyance that is not a point  
2 source from which pollutants are or may be discharged to WOTUS.

3           27. "Non-WOTUS protected surface water" means a protected surface  
4 water that is not a WOTUS.

5           28. "Non-WOTUS waters of the state" means waters of the state that  
6 are not WOTUS.

7           29. "On-site wastewater treatment facility" means a conventional  
8 septic tank system or alternative system that is installed at a site to  
9 treat and dispose of wastewater of predominantly human origin that is  
10 generated at that site.

11           30. "Ordinary high watermark" means the line on the shore of an  
12 intermittent or perennial protected surface water established by the  
13 fluctuations of water and indicated by physical characteristics such as a  
14 clear, natural line impressed on the bank, shelving, changes in the  
15 character of soil, destruction of terrestrial vegetation, the presence of  
16 litter and debris or other appropriate means that consider the  
17 characteristics of the channel, floodplain and riparian area.

18           31. "Perennial water" means a surface water or portion of surface  
19 water that flows continuously throughout the year.

20           32. "Permit" means a written authorization issued by the director  
21 or prescribed by this chapter or in a rule adopted under this chapter  
22 stating the conditions and restrictions governing a discharge or governing  
23 the construction, operation or modification of a facility. For the  
24 purposes of regulating non-WOTUS protected surface waters, a permit shall  
25 not include provisions governing the construction, operation or  
26 modification of a facility except as necessary for the purpose of ensuring  
27 that a discharge meets water quality-related effluent limitations or to  
28 require best management practices for the purpose of ensuring that a  
29 discharge does not cause an exceedance of an applicable surface water  
30 quality standard.

31           33. "Person" means an individual, employee, officer, managing body,  
32 trust, firm, joint stock company, consortium, public or private  
33 corporation, including a government corporation, partnership, association  
34 or state, a political subdivision of this state, a commission, the United  
35 States government or any federal facility, interstate body or other  
36 entity.

37           34. "Point source":

38           (a) Means any discernible, confined and discrete conveyance,  
39 including any pipe, ditch, channel, tunnel, conduit, well, discrete  
40 fissure, container, rolling stock, concentrated animal feeding operation  
41 or vessel or other floating craft from which pollutants are or may be  
42 discharged to WOTUS or protected surface water. ~~Point source~~

43           (b) Does not include return flows from irrigated agriculture.

1           35. "Pollutant" means fluids, contaminants, toxic wastes, toxic  
2 pollutants, dredged spoil, solid waste, substances and chemicals,  
3 pesticides, herbicides, fertilizers and other agricultural chemicals,  
4 incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum  
5 products, chemical wastes, biological materials, radioactive materials,  
6 heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining,  
7 industrial, municipal and agricultural wastes or any other liquid, solid,  
8 gaseous or hazardous substances.

9           36. "Postclosure monitoring and maintenance" means those activities  
10 that are conducted after closure notification and that are necessary to:

11           (a) Keep the facility in compliance with either the aquifer water  
12 quality standards at the applicable point of compliance or, for any  
13 aquifer water quality standard that is exceeded at the time the aquifer  
14 protection permit is issued, the requirement to prevent the facility from  
15 further degrading the aquifer at the applicable point of compliance as  
16 provided under section 49-243, subsection B, paragraph 3.

17           (b) Verify that the actions or controls specified as closure  
18 requirements in an approved closure plan or strategy are routinely  
19 inspected and maintained.

20           (c) Perform any remedial, mitigative or corrective actions or  
21 controls as specified in the aquifer protection permit or perform  
22 corrective action as necessary to comply with this paragraph and article 3  
23 of this chapter.

24           (d) Meet property use restrictions.

25           37. "Practicably" means able to be reasonably done from the  
26 standpoint of technical practicability and, except for pollutants  
27 addressed in section 49-243, subsection I, economically achievable on an  
28 industry-wide basis.

29           38. "Protected surface waters" means waters of the state listed on  
30 the protected surface waters list under section 49-221, subsection G and  
31 all WOTUS.

32           39. "Public waters" means waters of the state open to or managed  
33 for use by members of the general public.

34           40. "Recharge project" means a facility necessary or convenient to  
35 obtain, divert, withdraw, transport, exchange, deliver, treat or store  
36 water to infiltrate or reintroduce that water into the ground.

37           41. "Reclaimed water" means water that has been treated or  
38 processed by a wastewater treatment plant or an on-site wastewater  
39 treatment facility.

40           42. "Regulated agricultural activity" means the application of  
41 nitrogen fertilizer or a concentrated animal feeding operation.

42           43. "Safe drinking water act" means the federal safe drinking water  
43 act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

44           44. "Standards" means water quality standards, pretreatment  
45 standards and toxicity standards established pursuant to this chapter.

1           45. "Standards of performance" means performance standards, design  
2 standards, best management practices, technologically based standards and  
3 other standards, limitations or restrictions established by the director  
4 by rule or by permit condition.

5           46. "Tank" means a stationary device, including a sump, that is  
6 constructed of concrete, steel, plastic, fiberglass, or other non-earthen  
7 material that provides substantial structural support, and that is  
8 designed to contain an accumulation of solid, liquid or gaseous materials.

9           47. "Toxic pollutant" means a substance that will cause significant  
10 adverse reactions if ingested in drinking water. Significant adverse  
11 reactions are reactions that may indicate a tendency of a substance or  
12 mixture to cause long lasting or irreversible damage to human health.

13           48. "Trade secret" means information to which all of the following  
14 apply:

15           (a) A person has taken reasonable measures to protect from  
16 disclosure and the person intends to continue to take such measures.

17           (b) The information is not, and has not been, reasonably obtainable  
18 without the person's consent by other persons, other than governmental  
19 bodies, by use of legitimate means, other than discovery based on a  
20 showing of special need in a judicial or quasi-judicial proceeding.

21           (c) No statute specifically requires disclosure of the information  
22 to the public.

23           (d) The person has satisfactorily shown that disclosure of the  
24 information is likely to cause substantial harm to the business's  
25 competitive position.

26           49. "Vadose zone" means the zone between the ground surface and any  
27 aquifer.

28           50. "Waters of the state" means all waters within the jurisdiction  
29 of this state, including all perennial or intermittent streams, lakes,  
30 ponds, impounding reservoirs, marshes, watercourses, waterways, wells,  
31 aquifers, springs, irrigation systems, drainage systems and other bodies  
32 or accumulations of surface, underground, natural, artificial, public or  
33 private water situated wholly or partly in or bordering on the state.  
34 NOTWITHSTANDING ANY OTHER LAW, A DRY WASH, ARROYO, SWALE, GULLY OR RILL OR  
35 OTHER SIMILAR EROSIONAL FEATURE THAT IS CHARACTERIZED BY LOW VOLUME,  
36 INFREQUENT OR SHORT DURATION FLOWS IS NOT A WATER OF THIS STATE, WOTUS OR  
37 PROTECTED SURFACE WATER.

38           51. "Well" means a bored, drilled or driven shaft, pit or hole  
39 whose depth is greater than its largest surface dimension.

40           52. "Wetland" means, for the purposes of non-WOTUS protected  
41 surface waters, an area that is inundated or saturated by surface or  
42 groundwater at a frequency and duration sufficient to support, and under  
43 normal conditions does support, a prevalence of vegetation typically  
44 adapted for life in saturated soil conditions.

1           53. "WOTUS" means waters of the state that are also navigable  
2 waters as defined by section 502(7) of the clean water act.

3           54. "WOTUS protected surface water" means a protected surface water  
4 that is a WOTUS.

5           Sec. 2. Title 49, chapter 2, article 3.2, Arizona Revised Statutes,  
6 is amended by adding section 49-256.03, to read:

7           49-256.03. Dry washes; dredge and fill permits; exemption

8           NOTWITHSTANDING ANY OTHER LAW, A DRY WASH, ARROYO, SWALE, GULLY OR  
9 RILL OR OTHER SIMILAR EROSIONAL FEATURE THAT IS CHARACTERIZED BY LOW  
10 VOLUME, INFREQUENT OR SHORT DURATION FLOWS IS NOT A WATER OF THIS STATE OR  
11 PROTECTED SURFACE WATER, IS EXEMPT FROM THE PERMIT PROGRAM PRESCRIBED BY  
12 THIS ARTICLE AND IS NOT A WOTUS.